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No. _____

In The Supreme Court of the United States
October 1980 Term

HAROLD LEWIS
Plaintiff-Appellant

vs.

COOK COUNTY DEPARTMENT OF PUBLIC AID, ILLINOIS DEPARTMENT OF PUBLIC AID and ILLINOIS CIVIL SERVICE COMMISSION
Defendants-Appellees

On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

HAROLD LEWIS
3801 North Pine Grove
Chicago, IL 60613
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COOK COUNTY DEPARTMENT OF PUBLIC AID, ILLINOIS DEPARTMENT OF PUBLIC AID and ILLINOIS CIVIL SERVICE COMMISSION,
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Questions Presented

Stripped of all essential parts, this case revolves around the most important amendment to the U.S. Constitution: the First Amendment which states Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof, or abridging the freedom of speech, or of the press, or the right of the people peacefully to assemble, as to petition the government for a redress of grievances.

As Justice Douglas said in his dissent in *Dennis vs. United States,* 341 U.S. 494 at 509-510,71 S. Ct. 857, 867-868,95 L. Ed. 1137 (1951).

> "Yet free speech is the rule, not the exception. The restraint to be Constitutional must be based on more than fear, or than passionate opposition against the speech, or more than revolted dislike for its contents. There must be some immediate injury to society that is likely if speech is allowed."

Speech in the constitutional sense means communication, and as such refers not only to the spoken word, but to the written word—books, pamphlets, newspapers, etc.—and to movies, the theater, television, pictures, and the graphic arts as well. See *Freedom of Assembly,* Section 2, Page 61, Chapter 2 "Freedom of Speech, Press and Assembly—Civil Liberties and Civil Rights in the United States" by Harriet Pollack and Alexander B. Smith, West Publishing Company, 1978.

Justice Douglas in his opinion of *Termiello vs. Chicago,* 337 U.S. 1,3,13, 4-5 (1949) ruled:

> "A function of free speech under our system of government is to invite dispute. It may indeed best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger. Speech is often provocative and challenging. It may strike out prejudice and preconceptions and have profound unsettling effects as it presses for acceptance of an idea. That is why freedom of speech is nevertheless protected against censorship or punishment, unless shown likely to produce a clear and present danger of a serious substantial evil that rises far above public inconvenience, arrogance, or unrest. There is no room under our Constitution for a more restrictive view. For the alternative would lead to standardization of ideas either by legislatures, courts or dominant political or community groups."

Still more ideas on the subject are brought forth in the book *The System of Freedom of Expression* by Thomas I. Emerson, Vintage Books, New York City, p. 700, paragraph three, which relates government's role in free expression:

> "Unless opinion favorable to democracy and to aristocracy, to property and to equality, to cooperation and to competition, and to luxury, and to abstinence, to sociability and to individuality, to liberty and to discipline and all the other outstanding antagonisms of practical life are expressed with equal freedom and enforced and defended with equal talent and energy, there

is no chance of both elements obtaining their due; one scale is sure to go up, and the other down."

See John Stuart Mill's *On Liberty* p. 210 and 211 as quoted in *Freedom of Speech* by Franklin S. Haimon, Northwestern University, published by National Textbook Company, Skokie, Illinois, in conjunction with the American Civil Liberties Union, New York, New York, 1976.

When the petitioner made specific suggestions to the interaction of the public aid program as applied to the general welfare of the national economy rather than a straight manual interpretation of what had to be followed verbatim, the petitioner was given warnings and then removed from his position. The respondents did as they pleased because of the poorly functioning legal system in the City of Chicago. That the petitioner is not the only one caught in this vise is revealed by the recent census figures which indicate that the city has lost at least three quarters of a million people in the last twenty-five years. This situation is not unique to Chicago; the situation is the same in such cities as Detroit, Cleveland, and Philadelphia.

Only a small percentage of the cases brought before the U.S. Court of Appeals, Seventh Circuit, are allowed oral arguments. There are two reasons for this situation: there are only eight judges in this circuit—in some circuits there are as many as fifteen judges; and two, the ideology of the judges involved preclude fair justice for a man of average means, which brings this paper to a major point. A change of venue away from this city might be more suitable for judgement of all concerned. The problem is that the Supreme Court which is noted for its high intergrity only accepts a small percentage of cases sent to it. See E. Griswold, *Rationing Justice* (Irving Lecture at Cornell Law School on October 3, 1974), page 9 Commission on Revision of the Federal Court Appellate System Structure and Internal Procedures: Recommendations for Change of Preliminary Report which stated that a court be established in Washington which would hear cases so designated by the Supreme Court which, because of time limitations or other reasons, the Court was unable to hear.

It must be remembered that the U.S. Court of Appeals System was set up in the 1890s because of population pressure and as a result of more legal actions brought by U.S. citizens. See Public

Law 92-489 Act of October 13, 1972, to recommend Court changes.

What else do the census figures say in the Northeastern cities where there is negative growth? First that the recent decision of the Supreme Court to uphold the Hyde Amendment thus negating *Roe vs. Wade* was that the economic well being of the affected American woman would suffer harm as a result of bearing unwanted children to be placed on welfare roles. Abortion, of course, is the only answer when contraceptives don't function properly. It must be remembered that perhaps the greatest period of growth in Chicago's history was prior to the inception of the so-called vice control laws of 1912 which occurred in Chicago and other cities throughout the country which closed down the prevailing houses of prostitution. The result showed up in the flu epidemic of 1918 which killed more people than World War I and was partly responsible for the 1929 Depression and the subsequent Holocaust in Europe. America was barely able to sustain itself in a two-front war—World War II. It was a question of who do you know and sex for the monied.

A recent Chicago *Tribune* article of Bob Wiedrich stated that only very few ships came to Calumet Harbor during the last trading year. Why would anybody go to a place to suffer when they can go to Rotterdam and Hamburg where sex houses are allowed legally under government regulation? In Hamburg such modern instrumentation as closed circuit television is utilized to monitor movements of potential troublemakers. The German, Dutch and nearby French economy and banks are prospering to no end as a result. Contrast this with the Chrysler situation in the U.S. The only known houses of prostitution established after the assassination of Robert Kennedy are in the middle of nowhere, the Nevada desert. The report of the National Advisory Commission on Civil Disorder published by the New York Times Company in 1968 missed the most important point.

Government control of the economy re job control is an insidious cancer which can destroy the heart of American Democracy.

On March 10, 1981 it was revealed in a law suit in an article in the Chicago *Tribune*, Section 3, Page 6, how the present Attorney General, Mr. Fahrer, as well as the past one, Mr. Scott, had an army of "assistant" states attorneys who did legal work for the

state on a part-time basis while retaining their own practices. In some cases these attorneys earned more than $100,000 from the state work.

The defunct *Chicago Daily News* had an article some years ago which revealed that Mr. Scott had brought in a friend from Pennsylvania to try a law suit against a corporation who emerged (the friend) with a $250,000 fee. Yet these are the same people who represented the state in the Civil Service Commission's takeover of my position as a caseworker.

Jurisdiction

The Petition for Jurisdiction as per Rule 21, p.29, *Supreme Court Rules*, 1980; *Moore's Federal Practice*, Second Edition of James William Moore, Helen Bendix and Brett A. Ringle, Volume 12, published by Matthew Bender, New York, New York. Also see Part 5, Rule 17 Consideration Governing Review In Certiorari, see *Bender's Federal Practice* by Louis R. Frumer and Irwin Hall, Volume 5, Rules of the Supreme Court, effective June 30, 1980.

Court Jurisdiction per Article III, Section 2 of the U.S. Constitution. Also see, 28 USC 1254(1). Case is being appealed from court order from United States Court of Appeals No. 79-1051 dated November 7, 1980.

The Plaintiff mailed in the forty copies of his jurisdiction statement to the Supreme Court in Washington, D. C. via air mail on February 5, 1981 complying with the ninety-day deadline for the appeal denied on November 7, 1980 from the U.S. Court of Appeals Seventh Circuit. Also three copies of the statement were given to the Attorney General of the State of Illinois at his office at 160 North LaSalle Street, Chicago, Illinois, on that date.

Some weeks passed when the entire package was returned from Washington, D. C. The plaintiff did not understand what had transpired and placed a long distance call to Washington, D. C. and talked with a court clerk for the reason this had occurred.

The clerk stated that the plaintiff had mailed in typewritten and Xeroxed copies of his statement on 8½" x 13" paper, but this was only allowed in a case being presented in *forma pauperis*. The plaintiff had mailed in the docking fee of $200.00 along with the statement. As a result it would be necessary for the plaintiff to have the statement printed in booklet form per Rule 33 of *Rules*

of The Supreme Court. The plaintiff has complied with their request necessitating an additional fifty-seven days of time (see Rule 29, Section 2; also Rule 12, Section 2 of the *Rules.*) Also additional material has been added to bring the case up to date.

Still another problem arose when a few days prior to the plaintiff's sending in the required material to Washington, D. C. a letter was received from the clerk's office stating the belief that the plaintiff had abandoned any further intention of resubmitting his petition for writ of Certiorari. Also included was the plaintiff's money order of $200.00 plus a copy of the original writ.

A second long distance phone call was placed to the assistant clerk whose name was on the document, Mr. Edward C. Schade. After explaining the situation the appellant was switched to another phone and the appellant asked for the chief clerk, Mr. Alexander L. Stevas. The appellant was told that Mr. Stevas was in court and as a result the needed information concerning the current status of the case was given to another clerk, Robert Kuhn. The petition has been resubmitted to the Supreme Court for docking for oral argument.

I believe that this situation could have been alleviated if the Supreme Court had a representative in the Federal Building of Chicago so that people unfamiliar with exact court procedures could obtain expert advice and samples of completed court cases.

BY: Harold Lewis
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APPENDIX A

1. Judgement—United States Court of Appeals
2. Record Notice
3. Appeal to the United States Court of Appeals
4. Statement as to Need of Oral Argument
5. Notice from United States Court of Appeals
6. Memorandum Opinion
7. Complaint to the United States District Court
8. Civil Cover Sheet
9. U.S. Marshall's Notice
10. Letter of Denial from Illinois Supreme Court (unable to locate)
11. Opinion from Illinois Appellate Court
12. Attorney General's Brief
13. Attorney General's Request for Rehearing in Appellate Court
14. Oral Argument in Appellate Court
15. Charges Placed by Civil Service Commission
16. Motion to Dismiss
17. Motion to Void Motion of Dismissal
18. Notice of Civil Service Hearing

APPENDIX B

Table of Authorities

Cases Cited

Dennis vs. United States 341 U.S. 494 at 509-510, 71 S. Ct. 857, 867-869, 95 L. Ed. 1137 (1951).

Terminello vs. Chicago 337 U.S. 1, 3, 13, 4-5 (1979).

Constitutional Articles

U.S. Article III, Section 2.

Statutes

[redacted] 28 U.S.C. 1254(1).

P.L. 92-489 Act of October 13, 1972.

Books mentioned

The System of Freedom of Expression by Thomas I. Emerson, Vintage Books, New York, New York.

Freedom of Speech by Franklin S. Haimon, Northwestern University, published by National Textbook Company, Skokie, Illinois.

Moore's Federal Practice by James Moore, Helen Bendix and Brett Ringle, published by Matthew Bender, 1980.

Bender's Federal Practice by Louis Frumer and Irwin Hall, effective June 30, 1980.

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HAROLD LEWIS
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COOK COUNTY DEPARTMENT OF PUBLIC AID, ILLINOIS DEPARTMENT OF PUBLIC AID and ILLINOIS CIVIL SERVICE COMMISSION
Defendants-Appellees

Supplement to Appendix Petition For Writ of Certiorari To The United States Court of Appeals For The Seventh Circuit

HAROLD LEWIS
3801 North Pine Grove
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

HAROLD LEWIS Plaintiff, v. COOK COUNTY DEPARTMENT OF PUBLIC AID, ILLINOIS DEPARTMENT OF PUBLIC AID, ILLINOIS CIVIL SERVICE COMMISSION, REPRESENTATIVE BY THE ATTORNEY GENERAL OF THE STATE OF ILLINOIS, Defendants.	)	No. 78 C 989

MEMORANDUM OPINION AND ORDER

This matter is before the Court on a Motion to Dismiss pursuant to Rule 12(b), Federal Rules of Civil Procedure, ("F.R.Civ.P."), filed by defendants Illinois Department of Public Aid ("IDPA") and Illinois Civil Service Commission (the "Commission") and on a Motion to Dismiss filed by the Attorney General of the State of Illinois on his own behalf and on behalf of the Cook County Department of Public Aid.

Plaintiff's Complaint alleges violations of federally guaranteed rights. Jurisdiction is presumably invoked u ler 28 U.S.C. §1343.

I. DEFENDANTS' MOTION TO DISMISS THE ATTORNEY GENERAL AND THE COOK COUNTY DEPARTMENT OF PUBLIC AID AS PARTIES

The Cook County Department of Public Aid was abolished as a separate unit and merged into IDPA in 1974, Ill. Rev. Stat. ch. 23, §12-18.1(2). It thus no longer exists as a separate entity.

Accordingly, the Motion to Dismiss the Cook County Department of Public Aid as a defendant is granted.

The list of defendants named in plaintiff's Complaint ends with "Representative (sic) by the Attorney General of Illinois." This characterization may describe the Attorney General as counsel for defendants. If, however, it purports to name the Attorney General as a party, then he asserts he should be dismissed as a defendant. In support of his contention the Attorney General argues that his sole role in this matter has been as counsel for the other defendants. Plaintiff makes no allegations of misconduct on the part of the Attorney General in his Complaint. All of plaintiff's statements concerning the Attorney General refer to him in his capacity as counsel for the other defendants.

Accordingly, the Motion to Dismiss the Attorney General of the State of Illinois as a defendant is granted.

II. MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION

Defendants IDPA and the Commission move to dismiss on the ground that this Court lacks jurisdiction over the subject matter of this suit. These defendants' motion must be viewed in light of the important policy that pro se litigants, such as plaintiff here, should not be denied the opportunity to state a civil rights claim because of technicalities. Wherever possible, such litigation should be decided on the merits. Kauffman v. Moss, 420 F.2d 1270, 1276 (3rd Cir. 1970); Heckart v. Pate, 52 F.R.D. 224 (N.D. Ill. 1971).

Defendants assert that this Court lacks subject

matter jurisdiction because plaintiff fails to allege a federal question and a jurisdictional amount in excess of $10,000 as required by 28 U.S.C. §1331(a) and (b). This Court does not agree.

This Court has jurisdiction over the claim if the Complaint raises a federal question, even though plaintiff does not allege a specific jurisdictional statute. Mirin v. Taxi Cab of Clark Co. Nevada, 441 F.2d 1123, 1125 (9th Cir.), cert. denied, 404 U.S. 914 (1971). However, jurisdiction is presumably invoked pursuant to 28 U.S.C. §1343(3).

Section 1343 vests jurisdiction in this Court to redress the deprivation, not only of federal statutory civil rights, but also of Fourteenth Amendment rights. Davis v. Foreman, 251 F.2d 421, 422 (7th Cir.), cert. denied, 356 U.S. 974 (1958). When suit is brought pursuant to Section 1343 it is not necessary that the Complaint set out the particular portion of the Constitution or law of which plaintiff claims he was deprived. Gregg v. State of Tennessee, 425 F.Supp. 394, 395 (E.D. Tenn. 1976). Further, Section 1343 as amended does not impose a jurisdictional amount requirement. See also Jones v. Alfred H. Mayer Co., 392 U.S. 362 (1968).

Plaintiff asserts that he was unjustly removed from his position with IDPA and that he has been unable to "secure the attention of an impartial judge." Broadly construed, these statements allege a denial of plaintiff's federal rights. Because a dismissal for lack of subject matter jurisdiction is not justified unless it appears to a legal certainty that the federal issue is wholly insubstantial and frivolous, these allegations are sufficient to preclude dismissal. Snyder v. Board of Trustees of University of Illinois, 286 F.Supp. 927, 931 (N.D. Ill. 1968); Soglin v. Kauffman, 418 F.2d 163 (7th Cir. 1969).

Accordingly, the Motion to Dismiss for lack of subject matter jurisdiction filed by defendants IDPA and the Commission is denied.

III. MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED

In considering defendants' Motion to Dismiss pursuant to Rule 12(b)(6), F.R.Civ.P., all the allegations of the Complaint are to be taken as true and construed in a light most favorable to plaintiff. Haines v. Kerner, 404 U.S. 519 (1972).

Nevertheless, the Complaint must still set forth factual allegations. Plaintiff's mere conclusory allegations here fail to show any facts which would reveal that defendants have deprived plaintiff of any rights secured to him by the United States Constitution or other federal law. Therefore plaintiff's allegations are insufficient to state a claim upon which this Court can grant relief. Admas v. Pate, 445 F.2d 105 (7th Cir. 1971); Heckart v. Pate, supra.

It appears beyond a doubt that plaintiff can prove no set of facts in support of his claim which would entitle him to relief. Conley v. Gibson, 355 U.S. 41, 45-46 (1957).

Accordingly, the Motion to Dismiss for failure to state a claim upon which relief can be granted, filed by defendants IDPA and the Commission, is granted.

IV. CONCLUSION

The Motion to Dismiss the Cook County Department of Public Aid as a defendant is granted.

The Motion to Dismiss the Attorney General of the State of Illinois (sued herein as "Representative by the Attorney General of the State of Illinois") as a defendant is granted.

The Motion to Dismiss for lack of subject matter jurisdiction filed by defendants Illinois Department of Public Aid and the Illinois Civil Service Commission is denied.

The Motion to Dismiss for failure to state a claim upon which relief can be granted filed by defendants Illinois Department of Public Aid and the Illinois Civil Service Commission is granted.

ENTER: _____

ALFRED Y. KIRKLAND
JUDGE

DATED: December 13, 1978

Unpublished Per Curiam Order
JUDGMENT -- WITHOUT ORAL ARGUMENT

UNITED STATES COURT OF APPEALS

For the Seventh Circuit
Chicago, Illinois 60604

November 7, 1980

Before

Hon. Robert A. Sprecher, Circuit Judge
Hon. William J. Bauer, Circuit Judge
Hon. Richard D. Cudahy, Circuit Judge

HAROLD LEWIS, Plaintiff-Appellant,	)	Appeal from the United States District Court for the Northern District of Illinois, Eastern Division No. 78-C-989 Judge Alfred Y. Kirkland
No. 79-1051 vs.	)	
COOK COUNTY DEPARTMENT OF PUBLIC AID, ILLINOIS DEPARTMENT OF PUBLIC AID and ILLINOIS CIVIL SERVICE COMMISSION, Defendants-Appellees.	)	

This cause came before the Court for decision on the record from the United States District Court for the Northern District of Illinois, Eastern Division.

On consideration whereof, IT IS ORDERED AND ADJUDGED by this Court that the judgment of the said District Court in this cause appealed from be, and the same is hereby, AFFIRMED, with costs, in accordance with the order of this court entered this date.